

September 3, 2010

VIA HAND DELIVERY

FILED/ACCEPTED

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
236 Massachusetts Ave., N.E.
Suite 110
Washington, DC 20002

SFP - 3 2010

Federal Communications Commission
Office of the Secretary

Attn: Jennifer A. Lewis
Investigations and Hearings Division
Enforcement Bureau
Room 4-C330

Re: KTVU(TV), Oakland, California
Response to Letter of Inquiry
FCC File No. EB-10-IH-2936

Dear Ms. Dortch:

On behalf of KTVU Partnership ("Licensee"), licensee of KTVU(TV), Oakland, California, we hereby submit the Licensee's response to the Enforcement Bureau's Letter of Inquiry dated August 4, 2010 (the "LOI").¹ The LOI is based on a single complaint (the "Complaint") from a local viewer who is concerned that "Fox News [KTVU] begins many of their Broadcasts [sic] by broadcasting old news clips." Based on its review of the Complaint, the Enforcement Bureau is investigating whether Licensee has violated Section 73.1208 of the Commission's rules, which, under certain circumstances, requires disclosure that broadcast material is taped.

According to the Complaint, the viewer describes these clips as follows:

There was an earthquake this morning! A huge storm last night forced many people to higher ground! These are news clips from the past and very frightening and misleading to many people just tuning in.

Licensee reviewed the programming broadcast by KTVU(TV) during the period mentioned in the LOI and has determined that the viewer is referring to promotional announcements for KTVU(TV)'s local newscasts. In those promotional announcements, Licensee uses brief segments of archival footage from prior newscasts, including, for

¹ See Letter to KTVU Partnership from Kenneth M. Scheibel, Jr., Assistant Division Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, EB-10-IH-2936 (Aug. 4, 2010).

example, clips of KTVU(TV)'s anchors reporting on an earthquake and a heavy storm as described in the Complaint.

The Commission's rules do not require Licensee to identify those segments in its promotional announcements as pre-recorded material. Section 73.1208(a) requires separate disclosure for pre-recorded material only when "time is of special significance or . . . an affirmative attempt is made to create the impression that it is occurring simultaneously with the broadcast."² More importantly, Section 73.1208(b) categorically excludes all "announcements which are of a commercial, *promotional*, or public service nature" from the disclosure obligations.³ The public understands that promotional announcements typically are pre-recorded. Moreover, promotional announcements generally air during commercial time and, as a result, are unlikely to be confused with regular news programming. Accordingly, under the Commission's rules, Licensee had no obligation to disclose that its promotional announcements were pre-recorded. For these reasons, the Complaint does not raise any actionable issues under Section 73.1208.

In his attached Declaration, Timothy G. McVay, the Vice President and General Manager of KTVU(TV) and KTVU, Inc., which is the general partner of Licensee, responds to the specific questions in the LOI.

If the Enforcement Bureau staff has any questions about this matter, please contact the undersigned.

Respectfully submitted,



Michael D. Basile

Enclosures

Cc (w/encl.): Kenneth M. Scheibel, Jr. (via email and hand) (Kenneth.Scheibel@fcc.gov)
Jennifer A. Lewis (via email only) (Jennifer.Lewis@fcc.gov)

² 47 C.F.R. § 73.1208(a); *see also Re-Regulation of Radio and Television Broadcasting*, 25 R.R. 2d 1719, ¶5(f) (1972) (explaining that the rule is intended to protect the public "from being misled by any deliberate misuse of recordings, taping or filing").

³ § 73.1208(b) (emphasis added); *Re-Regulation Order*, 25 R.R. 2d at ¶5(f).

DECLARATION OF TIMOTHY G. McVAY

My name is Timothy G. McVay. I am Vice President and General Manager of KTVU(TV) and KTVU, Inc., which is the general partner of KTVU Partnership ("Licensee"), licensee of KTVU(TV), Oakland, California ("KTVU(TV)"). This declaration responds to the Enforcement Bureau's August 4, 2010, Letter of Inquiry to Licensee (the "LOI").

I have reviewed the LOI and the complaint included therein (the "Complaint"). I also have reviewed certain programming broadcast on KTVU(TV) during the period described in the LOI. I believe that the Complaint describes certain promotional announcements that KTVU(TV) airs to promote its local newscasts.

1. State whether the Licensee broadcast any or all of the material described in the Complaint on or around April 23, 2010.

From April 22, 2010 to April 24, 2010, Licensee broadcast 150 promotional announcements for KTVU(TV)'s local newscasts that include previously recorded news clips (the "Promos").⁴ Several of the Promos show KTVU(TV)'s meteorologist describing a storm or KTVU(TV)'s anchor reporting on an earthquake. Other Promos included different archived news footage.

In each Promo, it is apparent that Licensee is using archival material from prior newscasts. The Promos include a voiceover stating, for example, that KTVU(TV) provides "Complete Bay Area News Coverage." The Promos then incorporate prior news clips to demonstrate the detail and depth of KTVU(TV)'s local news coverage. Each archived clip lasts for less than five seconds and is cropped differently and placed off-center on the television screen when compared to a typical screenshot in a live newscast. Thus, viewers are unlikely to perceive that the archival footage is a live news report. Moreover, the Promos all air during commercial time and not as part of KTVU(TV)'s news programming, which further minimizes the potential for any confusion.

2. If the response to Inquiry 1 is "yes," respond to the following:

- a. Provide the time of the broadcast; and**
- b. State whether any or all of the broadcast was taped, filmed, or recorded.**

Exhibit A is a chart of all Promos that KTVU(TV) broadcast between April 22, 2010 and April 24, 2010, that included clips from past newscasts. The chart includes the

⁴ Between April 22, 2010 and April 24, 2010, KTVU(TV) broadcast well over 300 promotional announcements and station identification graphics. As used in this Declaration, the term Promo refers only to promotional announcements on KTVU(TV) that include pre-recorded news clips. The term Promo does not include any promotional announcement that KTVU(TV) broadcast between April 22, 2010, and April 24, 2010, that does not include footage from a prior newscast.

date and time of each broadcast. As indicated above, portions of the Promos include recorded material.

3. If the response to inquiry 2(b) is "yes," respond to the following:

- a. State whether the Licensee made any attempts to create the impression that the events broadcast were occurring simultaneously with the broadcast and if so, describe when and how;**
- b. State whether the Licensee announced that the broadcast was taped, filed, or recorded, and if so, describe when and how; and**
- c. If the Licensee did not announce that the broadcast was taped, filmed, or recorded, explain why such announcement was not made.**

Licensee made no attempt to create an impression that the archived news footage in the Promos was occurring simultaneously with the broadcast. Any reasonable viewer watching KTVU(TV) would understand that these are promotional announcements and not live reports of breaking news events. The Promos include prior news clips to provide examples of the detail and depth of KTVU(TV)'s local news coverage. The archived footage lasts for less than five seconds and is cropped differently and placed off-center on the television screen when compared to a typical screenshot in a live newscast.

Licensee did not include an announcement that the Promos were pre-recorded because Section 73.1208(b) of the Commission's rules specifically excludes "announcements . . . of a commercial, promotional, or public service nature" from the disclosure requirements in Section 73.1208(a).⁵

- 4. State whether the Licensee broadcast any or all of the material described in the Complaint on any stations licensed to it other than Station KTVU(TV). If so, Identify such other station(s) by licensee, call sign, and community of license; specify the date(s) and time(s) of day of such broadcast(s); state whether any or all of each broadcast was taped, filmed, or recorded; and respond to Inquiries 3(a), (b), and (c) with respond to each such broadcast.**

Licensee did not broadcast any of KTVU(TV)'s Promos on any other television station licensed to Licensee.

- 5. Provide copies of all Documents, including, but not limited to, a recording of the broadcast on DVD or a VHS videocassette tape and a written transcript of the recording including any announcement at the beginning of the broadcast indicating the broadcast as taped, filmed, or recorded, supporting and/or otherwise relating to the responses to the above Inquiries.**

Attached to this declaration are five DVDs containing twenty-four Promos that KTVU(TV) broadcast at various times between April 22, 2010 and April 24, 2010. Most

⁵ 47 C.F.R. § 73.1208(b).

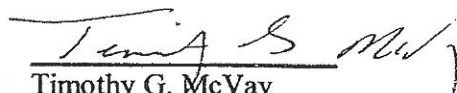
of the Promos aired several times during this three day period. For the convenience of the Enforcement Bureau staff, each Promo is identified by a unique file number which is included in the chart in Exhibit A. Licensee also attaches a transcript of each Promo as Exhibit B.

DVD's one through four contain seventeen individual .wav files. Each file is a different Promo that KTVU(TV) broadcast during the three-day period. The fifth DVD contains thirty-three different promotional announcements combined into a single video file. Only seven of the thirty three promotional announcements on DVD number five contain archived news clips. The other twenty-six promotional announcements are not responsive to the LOI.

6. Provide any additional information that you believe may be helpful to our consideration and resolution of this matter.

As the video clips of the Promos demonstrate, Licensee uses archival footage in some of its promotional announcements to promote its news coverage. The archived news clips appear during promotional announcements that run during commercial time and not as part of regular news programming. As such, Licensee is not required to disclose that the Promos include pre-recorded material.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge information and belief.


Timothy G. McVay
Vice President and General Manager,
KTVU(TV) and KTVU, Inc.,
General Partner of KTVU Partnership

September 3, 2010

EXHIBIT A

Chart of Promos Between April 22 and April 24, 2010

Date	Time	Description	Length	File Number/Disc Number
April 22, 2010	12:25 a.m.	Live Drive-Time Promo	:30	51800/Disc #5
	12:29 a.m.	KTVU 6 PM News Promo	:11	51404/Disc #2
	12:59 a.m.	KTVU 5 PM News Promo	:10	51554/Disc #3
	12:55 a.m.	Stormtracker News Promo	:30	51450/Disc #5
	1:11 a.m.	Live Drive-Time Promo	:30	51806/Disc #5
	1:27 a.m.	KTVU 10 PM News Promo	:30	53810/Disc #4
	1:31 a.m.	KTVU 5 PM News Promo	:20	51551/Disc #3
	1:40 a.m.	KTVU Morning News Promo	:30	51900/Disc #4
	2:58 a.m.	KTVU Morning News Promo	:30	51900/Disc #4
	2:59 a.m.	KTVU 5 PM News Promo	:10	51554/Disc #3
	3:58 a.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	4:12 a.m.	KTVU Morning News Promo	:30	51900/Disc #4
	4:13 a.m.	Stormtracker News Promo	:30	51455/Disc #5
	4:14 a.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	4:20 a.m.	Live Drive-Time Promo	:30	51806/Disc #5
	4:22 a.m.	KTVU Mobile Promo	:30	51480/Disc #2
	4:37 a.m.	Live Drive-Time Promo	:30	51806/Disc #5
	4:38 a.m.	Stormtracker News Promo	:30	51450/Disc #5
	4:45 a.m.	KTVU Morning News Promo	:30	51900/Disc #4
	4:53 a.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	5:22 a.m.	KTVU 6 PM News Promo	:30	51400/Disc #1
	5:54 a.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	6:13 a.m.	KTVU 6 PM News Promo	:20	51401/Disc #1
	6:28 a.m.	KTVU 10 PM News Promo	:30	53810/Disc #4
	6:41 a.m.	KTVU 10 PM News Promo	:30	53810/Disc #4
	6:58 a.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	7:28 a.m.	KTVU 6 PM News Promo	:30	51400/Disc #1
	7:43 a.m.	KTVU Mobile Promo	:10	51483/Disc #2
	7:44 a.m.	KTVU 5 PM News Promo	:10	51553/Disc #3
	8:21 a.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	8:59 a.m.	KTVU 6 PM News Promo	:11	51404/Disc #2
	9:25 a.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	9:55 a.m.	KTVU 10 PM News Promo	:30	53810/Disc #4
	9:59 a.m.	KTVU 6 PM News Promo	:11	51404/Disc #2
	10:40 a.m.	KTVU 5 PM News Promo	:20	51551/Disc #3
	11:13 a.m.	KTVU 6 PM News Promo	:30	51400/Disc #1
	11:28 a.m.	KTVU 5 PM News Promo	:10	51553/Disc #3
	11:43 a.m.	MTVU Morning News Promo	:15	51902/Disc #4
	11:59 a.m.	KTVU 6 PM News Promo	:11	51404/Disc #2
	12:27 p.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	12:54 p.m.	KTVU Morning News Promo	:30	51900/Disc #4
	1:06 p.m.	KTVU 6 PM News Promo	:30	51400/Disc #1
	1:36 p.m.	KTVU Morning News Promo	:30	51900/Disc #4

Date	Time	Description	Length	File Number/Disc Number
April 22, 2010 (cont'd)	3:56 p.m.	Live Drive-Time Promo	:15	51802/Disc #5
	6:21 p.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	6:21 p.m.	KTVU Mobile Promo	:10	51483/Disc #2
	6:29 p.m.	KTVU 5 PM News Promo	:10	51554/Disc #3
	6:43 p.m.	KTVU 6 PM News Promo	:15	51402/Disc #1
	7:12 p.m.	KTVU 5 PM News Promo	:15	51552/Disc #3
	7:25 p.m.	KTVU 6 PM News Promo	:20	51401/Disc #1
	7:33 p.m.	KTVU Morning News Promo	:15	51902/Disc #4
	7:57 p.m.	KTVU 5 PM News Promo	:10	51554/Disc #3
	10:25 p.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	10:52 p.m.	KTVU 6 PM News Promo	:20	51401/Disc #1
	11:25 p.m.	KTVU Morning News Promo	:20	51901/Disc #4
	11:29 p.m.	KTVU 5 PM News Promo	:10	51554/Disc #3
	11:55 p.m.	Live Drive-Time Promo	:15	51808/Disc #5
	11:59 p.m.	KTVU 6 PM News Promo	:11	51404/Disc #2
April 23, 2010	12:26 a.m.	Live Drive-Time Promo	:20	51807/Disc #5
	12:44 a.m.	KTVU Morning News Promo	:30	51900/Disc #4
	12:54 a.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	12:55 a.m.	KTVU Mobile Promo	:30	51480/Disc #2
	1:31 a.m.	Live Drive-Time Promo	:15	51802/Disc #5
	1:39 a.m.	KTVU Mobile Promo	:30	51480/Disc #2
	1:46 a.m.	KTVU 6 PM News Promo	:30	51400/Disc #1
	1:59 a.m.	KTVU 5 PM News Promo	:10	51554/Disc #3
	2:59 a.m.	KTVU 5 PM News Promo	:10	51554/Disc #3
	3:28 a.m.	KTVU Mobile Promo	:30	51480/Disc #2
	3:29 a.m.	KTVU 6 PM News Promo	:10	51404/Disc #2
	3:58 a.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	4:01 a.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	4:02 a.m.	KTVU Mobile Promo	:30	51480/Disc #2
	4:11 a.m.	Live Drive-Time Promo	:30	51800/Disc #5
	4:18 a.m.	KTVU Morning News Promo	:30	51900/Disc #4
	4:31 a.m.	KTVU 6 PM News Promo	:30	51400/Disc #1
	4:44 a.m.	KTVU 10 PM News Promo	:30	53810/Disc #4
	4:45 a.m.	KTVU Mobile Promo	:30	51480/Disc #2
	4:56 a.m.	Live Drive-Time Promo	:30	51800/Disc #5
	5:18 a.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	5:40 a.m.	KTVU 6 PM News Promo	:30	51400/Disc #1
	5:50 a.m.	KTVU 6 PM News Promo	:30	51400/Disc #1
	5:59 a.m.	KTVU 6 PM News Promo	:10	51404/Disc #2
	6:05 a.m.	KTVU Mobile Promo	:30	51480/Disc #2
	6:05 a.m.	KTVU 5 PM News Promo	:20	51551/Disc #3
	6:12 a.m.	KTVU Mobile Promo	:10	51483/Disc #2
	6:10 a.m.	KTVU Mobile Promo	:30	51480/Disc #2
	6:10 a.m.	KTVU 5 PM News Promo	:20	51551/Disc #3
	6:50 a.m.	KTVU 10 PM News Promo	:30	53810/Disc #4
	6:59 a.m.	KTVU 6 PM News Promo	:10	51404/Disc #2
	7:26 a.m.	KTVU 5 PM News Promo	:30	51550/Disc #1

Date	Time	Description	Length	File Number/Disc Number
April 23, 2010 (cont'd)	8:18 a.m.	KTVU 6 PM News Promo	:30	51400/Disc #1
	8:58 a.m.	KTVU 5 PM News Promo	:10	51554/Disc #3
	9:23 a.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	9:56 a.m.	KTVU 6 PM News Promo	:30	51400/Disc #1
	10:38 a.m.	KTVU 6 PM News Promo	:30	51400/Disc #1
	10:59 a.m.	KTVU 5 PM News Promo	:10	51554/Disc #3
	11:44 a.m.	KTVU.com	:15	51482/Disc #2
	11:52 a.m.	KTVU Mobile Promo	:30	51480/Disc #2
	12:27 p.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	12:43 p.m.	KTVU 6 PM News Promo	:20	51401/Disc #1
	1:07 p.m.	KTVU 6 PM News Promo	:30	51400/Disc #1
	1:37 p.m.	KTVU Morning News Promo	:20	51901/Disc #4
	1:45 p.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	2:49 p.m.	Live Drive-Time Promo	:15	51808/Disc #5
	2:50 p.m.	KTVU 10 PM News Promo	:30	53810/Disc #4
	6:21 p.m.	KTVU Mobile Promo	:30	51480/Disc #2
	7:25 p.m.	KTVU 10 PM News Promo	:30	53810/Disc #4
	10:28 p.m.	KTVU 10 PM News Promo	:30	53810/Disc #4
	10:52 p.m.	Live Drive-Time Promo	:20	51807/Disc #5
	10:59 p.m.	KTVU 6 PM News Promo	:10	51404/Disc #2
	11:29 p.m.	KTVU 6 PM News Promo	:10	51404/Disc #2
	11:55 p.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
April 24, 2010	12:12 a.m.	KTVU 6 PM News Promo	:30	51400/Disc #1
	12:19 a.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	12:32 a.m.	KTVU Mobile Promo	:30	51480/Disc #2
	12:50 a.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	12:58 a.m.	KTVU 10 PM News Promo	:30	53810/Disc #4
	1:26 a.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	1:27 a.m.	KTVU Mobile Promo	:30	51480/Disc #2
	1:44 a.m.	KTVU 6 PM News Promo	:30	51400/Disc #1
	1:56 a.m.	KTVU 10 PM News Promo	:30	53810/Disc #4
	1:59 a.m.	KTVU Mobile Promo	:30	51480/Disc #2
	2:13 a.m.	KTVU 10 PM News Promo	:30	53810/Disc #4
	2:25 a.m.	KTVU 6 PM News Promo	:30	51400/Disc #1
	2:25 a.m.	KTVU Morning News Promo	:30	51900/Disc #4
	2:33 a.m.	Live Drive-Time Promo	:30	51806/Disc #5
	3:58 a.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	4:58 a.m.	KTVU 5 PM News Promo	:15	51552/Disc #3
	5:58 a.m.	KTVU 10 PM News Promo	:30	53810/Disc #4
	6:28 a.m.	KTVU Mobile Promo	:30	51480/Disc #2
	6:37 a.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	6:46 a.m.	KTVU 10 PM News Promo	:30	53810/Disc #4
	6:46 a.m.	KTVU Morning News Promo	:30	51900/Disc #4
	6:47 a.m.	KTVU Mobile Promo	:30	51480/Disc #2
	7:48 a.m.	KTVU Mobile Promo	:30	51480/Disc #2
	12:10 p.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	12:21 p.m.	KTVU 10 PM News Promo	:30	53810/Disc #4

Date	Time	Description	Length	File Number/Disc Number
April 24, 2010 (cont'd)	12:45 p.m.	Live Drive-Time Promo	:30	51806/Disc #5
	4:32 p.m.	KTVU 5 PM News Promo	:10	51553/Disc #3
	5:16 p.m.	KTVU Morning News Promo	:20	51901/Disc #4
	5:45 p.m.	KTVU 10 PM News Promo	:30	53810/Disc #4
	6:22 p.m.	KTVU 5 PM News Promo	:10	51553/Disc #3
	6:28 p.m.	KTVU 6 PM News Promo	:10	51403/Disc #1
	6:29 p.m.	KTVU 10 PM News Promo	:10	53811*
	7:20 p.m.	KTVU 10 PM News Promo	:30	53810/Disc #4
	7:57 p.m.	KTVU 5 PM News Promo	:10	51553/Disc #3
	9:23 p.m.	Live Drive-Time Promo	:15	51802/Disc #5
	10:22 p.m.	KTVU 5 PM News Promo	:30	51550/Disc #1
	11:21 p.m.	Live Drive-Time Promo	:30	51800/Disc #5
	11:58 p.m.	KTVU 10 PM News Promo	:10	53811*

* Licensee was unable to locate a copy of Promo #53811 but believes it included at least one clip of archived news footage. Licensee believes that this Promo includes some – but not all – of the same news footage as Promo #53810.

EXHIBIT B

Transcript of Promos on KTVU(TV)

Promo #51400:

Narrator: KTVU Channel 2 News at 6, delivering the Bay Area's major news of the day.

Anchor 1: The Bay Area is bracing for another powerful winter storm.

Narrator: Coverage of the news where you live.

Anchor 2: Another small earthquake this morning rattled parts of.

Narrator: With more depth and detail.

Reporter 1: What caused the major flooding here? Two things:

Narrator: And weather forecasts and conditions from the area where you live.

Meteorologist: A lot more rain. You will be impacted.

Narrator: Frank Sommerville, Julie Haener. Weeknights on KTVU Channel 2 News at 6. Complete Bay Area news coverage.

Promo #51401:

Narrator: KTVU Channel 2 News at 6, delivering the Bay Area's major news of the day.

Anchor 1: The Bay Area is bracing for another powerful winter storm.

Narrator: Delivering the Bay Area's major news of the day.

Anchor 2: Another small earthquake this morning rattled parts of the South Bay.

Narrator: And weather forecasts and conditions from the area where you live. Frank Sommerville, Julie Haener. Weeknights on KTVU Channel 2 News at 6.

Promo #51402:

Narrator: KTVU Channel 2 News at 6.

Anchor 1: A new plan is in the works tonight to clean up.

Narrator: Coverage of the news where you live.

Anchor 2: Another small earthquake this morning rattled parts of.

Narrator: With more depth and detail. Frank Sommerville, Julie Haener. Weeknights on KTVU Channel 2 News at 6.

Promo #51403:

Narrator: Coverage of the news where you live.

Anchor 1: Another small earthquake this morning rattled parts of.

Narrator: Frank Sommerville, Julie Haener. Weeknights on KTVU Channel 2 News at 6.